

**MINUTES
BOARD OF ADJUSTMENT
JANUARY 12, 2016**

Chair Clithero called the meeting to order at approximately 7:00 p.m. Those members attending included Philip Clithero, Matt Reichert, Janet Hammen, Dennis Hazelrigg and Martha John. Also attending were the Deputy City Clerk, Megan Eldridge, Building Regulations Supervisor, John Simon, Community Development Director, Tim Teddy, and Assistant City Counselor, Ryan Moehlman.

The minutes from the regular meeting of December 8, 2015 were approved as submitted on a motion by Ms. John and a second by Mr. Hazelrigg.

The following cases, properly advertised, were considered. All persons testifying were duly sworn by the Deputy City Clerk.

Case Number 1911 was a request by Jerome and Cheryl Rackers on behalf of the Jerome E. and Cheryl M. Rackers Revocable Trust for a special permit to allow an addition to a non-conforming building pursuant to Section 29-28(d) of the Code of Ordinances on property located at 63 E. Broadway.

Chair Clithero opened the public hearing.

Phebe La Mar, an attorney with offices at 111 S. Ninth Street, appeared on behalf of Jerome and Cheryl Rackers. She stated the Rackers desired to construct an addition to their existing building at 63 E. Broadway, where Lifestyles Furniture was located. They were requesting a special permit to expand a non-conforming building pursuant to Section 29-28(d) of the Code of Ordinances of the City of Columbia. The subject property was located west of Providence Road in a C-2 zoning district. She noted Section 29-15 of the Code of Ordinances required buildings in the C-2 zoning district to be two stories and at least 24 feet tall. The existing building had been constructed a number of years ago, and Lifestyles Furniture had operated at the subject property for 11 years. She mentioned Section 29-28(d) of the Code of Ordinances provided that the Board could grant a special permit to construct an extension to a non-conforming building in the case of evident hardship, as long as the extension did not exceed 25% of the first floor area. The proposed addition would be located at the rear of the parking lot, so it would not significantly affect the building's appearance from the street. She noted a furniture store was a permitted use in the C-2 zoning district, and the business and the existing building were not conducive to apartments or other businesses being located on a second floor. The proposed use for the building addition would not be appropriate on a second floor as the business's warehouse space had to be on the ground floor to prevent the need to take items upstairs for storage. The existing building was located outside of the heavy pedestrian shops in the downtown area, and the two story building requirement was not as critical in the area of the subject property as it might be for other locations in the downtown. She commented that the proposed addition was designed to be consistent with the front of the existing building. She noted there was evident hardship in applying Section 29-16 of the Code of Ordinances. The size of the existing building was 7,540 square feet and the proposed addition would be 1,762 square feet, which was less than 25% of the area of the first floor. She requested the Board grant a special permit to expand the non-conforming building in order to permit construction of the additional space on the building as shown on the site plan.

Ms. Hammen asked if the parking would be reduced. Ms. La Mar replied there would be a slight loss, but they would still be in compliance with the required number of parking spaces.

Ms. Hammen understood the proposed building addition would be located at the rear of the existing building. Ms. La Mar stated that was correct and noted it would not be the primary part of the building that would be seen.

There being no further comment, Chair Clithero closed the public hearing.

Mr. Moehlman stated this was the third or fourth time the Board had recently heard a request for this type of permit. This special permit fell under Section 29-28(d) of the Code of Ordinances, which allowed expansion of non-conforming uses to up to 25% of the first floor, and the Board should utilize the standard of evident hardship. He noted evident hardship was a unique term as there was no case law defining it, so it was up to the Board to determine what that standard meant and whether the applicant had met that standard.

Mr. Simon commented that the applicant had accurately described the situation and would meet the less than 25% expansion rule under Section 29-28(d) of the Code of Ordinances.

Ms. John made a motion to approve the special permit as requested. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1911 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAMMEN, HAZELRIGG, JOHN. VOTING NO: NO ONE. The special permit was approved as requested.

Case Number 1912 was a request by Zeta Tau Alpha Fraternity Housing Corporation for a variance to the building height requirement by allowing the building height to exceed the maximum height permitted on property located at 912 Richmond Avenue.

Chair Clithero opened the public hearing.

Garrett Taylor, an attorney with offices at 1103 E. Broadway, appeared on behalf of the Alpha Psi of Zeta Tau Alpha House Corporation. Mr. Taylor provided a handout of his PowerPoint presentation. He stated they were requesting a variance from the 35 foot building height limitation in the R-3 zoning district. The initial plans submitted to City staff had a building height of 46 feet 6 inches, but a new design had been created that lowered the height to 43 feet 4 inches. Since then they had been able to further lower the height to 43 feet, however, the applicant was requesting a variance for a building height of 44 feet to provide room if necessary. He noted Sections 29-26(a)(1)(a) and 29-26(a)(1)(b) of the City Code allowed for a building height of up to 75 feet in the R-3 zoning district if there was an appropriate additional setback. They would be in compliance with the City's yard requirements. He commented that Section 29-31(g)(6)(c) of the City Code stated in passing upon appeals where there were practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the chapter, the Board could vary or modify the application of the regulations or provisions of such chapter relating to the construction or alteration of buildings, so that the spirit of such chapter was observed, public safety and welfare was secured, and substantial justice was done. He requested that their variance request be offered into evidence. The existing structure was approximately 50 years old and had become outdated, so the housing corporation

wanted to tear it down and build a new facility. The existing structure was 17,800 square feet, and the proposed structure would be 28,400 square feet. The existing structure had three stories and the proposed structure would also have three stories, however there would be more double rooms, a couple of triple rooms, and a couple of four person rooms. He pointed out the existing house had one six person room, two five person rooms, one four person room, and seven triple person rooms on the third floor, but those communal rooms were no longer wanted or necessary. In order to compete with other sorority houses and the University, they wanted to update and modernize the house. The existing structure housed 79 members, and the proposed structure would house 86 members. The chapter currently had 310 members. He noted the study hall rooms were insufficient, the dining hall could not house enough members, and the chapter room was not large enough for all of the members to meet in the existing house. The floor to ceiling height in the existing structure was less than 8 feet, and the proposed structure would have a floor to ceiling height of 10 feet or higher on the first floor, nine feet on the residential floors, space for updated HVAC equipment, and attic space. The proposed structure would fit in with many of the houses being built in Greek Town. Although the house's square footage would increase by approximately 11,000 square feet, the footprint would mostly remain the same. He commented that some parking spaces would be removed on this lot, however they would still meet the City's parking requirements. The amount of parking, vehicles, and impervious surface would be reduced. The proposed structure would be ADA compliant and would have amenities desired by university students. They believed the proposed building fit in with the surrounding neighborhood.

Mr. Moehlman stated a standard for granting variances was that the alleged difficulty or hardship must be different from that suffered throughout the zone or location. He asked how the subject property was different from properties in the adjoining neighborhood. Mr. Taylor replied the lot of the subject property was long and rectangular. He noted they could try to widen the house and request a variance from the yard setbacks or they could lengthen the house and take away more parking, but the floor to ceiling heights would be reduced and a variance from the parking requirements would be needed. They believed the rectangular nature of the lot caused them to build up instead of out. The house would be built on a steel frame structure, which was important for longevity and the residents' safety. He requested the Board approve the variance to the building height requirement for the requested nine feet. If the variance was granted, there would be no adverse effects on the surrounding area, there would not be any change to public safety or welfare, and the viability of the zoning ordinance as a whole would be protected. He stated the proposed structure would be in character with the appearances, heights, and dimensions of other buildings in the area. The Chi Omega house had a building height of 44 feet 4 inches because it had been granted a variance for that on January 10, 2012. The Delta Upsilon house had a building height of 41 feet, the Alpha Gamma Sigma house had a building height of 40 feet, the Beta Theta Pi house had a building height of 42 feet 4 inches, FarmHouse had a building height of 48 feet when measured to the roof peak, and residence halls at the University of Missouri had a building height of 42 feet when measured to the roof peak.

Mr. Moehlman stated a person seeking a non-use variance had to demonstrate that the property could not be used for a permitted use without conflicting with ordinance restrictions. He understood the existing structure was being used as a sorority house, which was a permitted use in its designated zoning district. Mr. Taylor stated that was correct. Mr. Moehlman asked why a variance was needed in order to create a successful sorority house when the sorority house was already successful. Mr. Taylor stated due to the changes of other sorority houses, the University, and the new dorms being built, everyone was competing for the same students. They were trying to build a new house to attract top students attending the University of Missouri.

Mr. Moehlman stated variances ran with the land and were not personal to the property owner. He asked if Mr. Taylor believed the requested variance would be appropriate if it was not tied to a sorority use. Mr. Taylor believed the variance would still be appropriate.

Ms. Hammen asked for the building height of the Alpha Gamma Sigma house. Mr. Taylor replied the building height was 40 feet. Ms. Hammen asked if the house was under construction. Mr. Taylor believed it was still under construction. Ms. Hammen understood a variance had recently been granted for it. Mr. Taylor replied the variance was granted March 10, 2015.

Ms. Hammen asked if the FarmHouse was a new building. Mr. Taylor replied it was not. He noted they had not measured that building per the ordinance, and had only measured it to the peak height of the roof. He clarified he was not stating that the FarmHouse was not in compliance or that a variance had not been granted for it. He stated the FarmHouse building had been in existence for quite some time.

Ms. Hammen stated she appreciated the information Mr. Taylor had provided as it was easier to understand the application and testimony. She was appreciative that the building height had been lowered and was more in compliance.

Ms. Hammen understood the existing parking was in compliance and asked for the number of current parking spaces and the number of parking spaces that would be lost. Mr. Taylor replied there were currently 60 parking spaces. The new house would provide for 86 members. Ms. Hammen asked for the required number of parking spaces. Mr. Taylor replied one parking space for every two members was required, and they would have 44 parking spaces, and would therefore still be in compliance.

Ms. Hammen asked if there were any stormwater requirements for the proposed building. Mr. Taylor believed there were.

Robbie Price, an architect at Simon Oswald Architecture, offices at 2801 Woodland Drive, stated they were working with civil engineering consultants to finalize the stormwater requirements. Ms. Hammen understood the applicant might request a variance to the stormwater requirements in the future. Mr. Price stated he did not believe they would request a variance to the stormwater requirements, as there would be more pervious area than there was presently in the new plan.

There being no further comment, Chair Clithero closed the public hearing.

Mr. Simon stated the building height had been accurately depicted in the schematic design that had been presented. He clarified the exception to building height, area, and setback that had previously been mentioned would not be applicable to fraternities and sororities, as it was only applicable to public and semi-public buildings.

Mr. Moehlman stated the requested variance was for a non-use variance. A person seeking a non-use variance must demonstrate, as a practical matter, the property could not be used for a permitted use without conflicting with ordinance restrictions. That standard was the most pertinent standard the Board should consider. Ms. Hammen asked Mr. Moehlman what that standard meant. Mr. Moehlman said the standard came from a decision by the court of appeals in 2008 in the *Baumer v. City of Jennings* case. The court said a person seeking a non-use variance must

demonstrate that as a practical matter the property could not be used for a permitted use without coming into conflict with the restrictions contained in the ordinances. Ms. Hammen understood if the applicant wanted to add a bigger building, it would conflict with the permanent use requirement. Mr. Moehlman thought that was a fair way to phrase it.

Ms. Hammen said Greek Town seemed to be a unique area within Columbia and the R-3 zoning district. She believed the City Council recently passed an ordinance in regard to parking in the R-3 zoning district that was curtailed to Greek Town and not other areas where fraternities and sororities might be located. Within the last two years, variances to the building height had been granted for three other properties in Greek Town. She said an overlay area or plan for Greek Town might alleviate some of these difficulties. She explained she struggled with this issue because she had firm beliefs, and wondered whether it was unique enough to meet the hardship definition. Chair Clithero asked if this issue had been addressed in the new zoning ordinances. Mr. Teddy replied the draft zoning ordinances had not changed the building height in the R-3 zoning district. Chair Clithero stated it seemed these building height variances had been approved because it was impossible to build this type of building and stay within the 35 foot height limitation. He thought something needed to be looked at for this type of residential building.

Mr. Hazelrigg stated this was not a unique situation and this was not the first time the Board had heard this particular request. The applicant was attempting to replace an older building with something similar that had more amenities and space. He preferred ceilings at nine feet instead of eight feet or less. When this building was built, eight-foot floor heights were more common. More amenities were being put in at University buildings, and the sorority was competing with the University and other apartment complexes. Chair Clithero stated it was nice to have heating, air conditioning, and sprinkler systems in the building, but installing them was difficult. Mr. Hazelrigg commented that the applicant was proposing something similar to what currently existed and noted they had reduced the original building height. He stated if a 35 foot tall building was built, it would have a flat roof, and flat roofs leaked.

Ms. Hammen asked for the height of the existing building. Mr. Taylor replied he was not sure what the exact height was, but noted it complied with the building height requirement.

Ms. Hammen thought this was a unique area adjacent to the campus that was perhaps more deserving of some unique solutions.

Mr. Hazelrigg made a motion to approve the variance as requested for a building height of 44 feet. The motion was seconded by Ms. John.

CASE NO. 1912 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAMMEN, HAZELRIGG, JOHN. VOTING NO: NO ONE. The variance was approved as requested.

Case Number 1913 was a request by MU House Corporation of Delta Gamma, a Benevolent Corporation, f/k/a MU Association of Delta Gamma for variances to the (1) front yard setback requirement (west) by allowing the proposed building and porch to encroach into the required front yard; (2) side yard setback requirement (north) by allowing the proposed porch to encroach into the required side yard; (3) side yard setback requirement (south) by allowing the proposed stairs to encroach into the required side yard; (4) rear yard setback requirement (east) by allowing the proposed building to encroach into the required rear

yard; (5) maximum building height requirement by allowing the building height to exceed the maximum height permitted; (6) minimum off-street parking spaces required and the requirement that those parking facilities be located on premise or within one thousand (1,000) feet therefrom by allowing fewer off-street parking spaces than required and allowing those parking facilities to not be located on premise or within one thousand (1,000) feet therefrom; (7) requirement that no parking be permitted within six (6) feet of an adjoining lot in a residential district by allowing parking to be located within six (6) feet of an adjoining lot in a residential district; and (8) screening and landscaping requirements for paved areas within fifty feet of a residential use/zoning district by not requiring screening and landscaping for the paved areas within fifty feet of a residential use/zoning district as required by Section 29-25(e)(5) on property located at 900 S. Providence Road.

Chair Clithero opened the public hearing.

Tom Harrison, an attorney with offices at 1103 E. Broadway, presented a PowerPoint presentation and provided a handout of exhibits which included: the PowerPoint presentation, the January 12, 2016 Board of Adjustment meeting agenda, supporting documentation for Case Number 1913, certified copies of Sections 29-8, 29-25, and 29-30 of the City Code and City of Columbia Ordinance No. 022699, real estate parcel detail from the Boone County Assessor, real estate deed, plat, and Board of Adjustment meeting minutes from January 10, 2012, May 14, 2013, February 11, 2014, and March 10, 2015. Mr. Harrison submitted certified copies of Sections 29-8, 29-25, and 29-30 of the City Code and City of Columbia Ordinance No. 022699 for the record.

Mr. Moehlman suggested the Board vote on the variances separately to avoid confusion.

Mr. Harrison stated the Delta Gamma sorority was located on the subject property at 900 S. Providence Road. He noted a companion case would be heard separately and the two cases overlapped to a large degree. The subject property of the other case was located at 411 Burnam Avenue, which was the Delta Gamma annex. Currently members lived at the main house and the annex. The variances being requested for this subject property related to setbacks on each of the four sides of the proposed building, the building height, and parking. The existing structure was about 90 years old, and more space and a modern house were needed due to competition. One main reason they desired to build a new house was because it would allow all members to live under one roof. He pointed out that currently 47 members lived in the existing house and 33 members lived in the annex. The existing house was just under 15,000 square feet and the new house would be just under 39,000 square feet. There were currently 12 parking spaces on this subject property and 24 parking spaces at the annex, and the proposal was to have four parking spaces on this subject property and 30 parking spaces at the annex. He commented that they planned to demolish the existing house at the end of the semester and be ready for occupancy in Fall 2017. The proposed structure would house 92 members and one house director. He noted variances had previously been granted for the subject property, and City of Columbia Ordinance No. 022699 amended part of the zoning code as it related to parking. Off-site parking had previously not been permitted in residential zoning districts, and this ordinance created an exception for Greek Town. He stated the parking generator and the parking lot would both have to be located in Greek Town. He mentioned the subject property was located in an R-3 zoning district, and the subject property and the parking lot were legal lots, which was also a requirement of the ordinance.

Tim Crockett, an engineer with Crockett Engineering, offices at 2608 N. Stadium Boulevard, stated the subject property was unique because the tract was extremely small compared to other sites, and it was a corner lot with double frontages and double setbacks which restricted the buildable area. The lot size was less than one-half of an acre and roughly 133 or 135 feet by 140 feet. He noted the lot was relatively small for Greek Town, and mentioned the Chi Omega house, the Delta Upsilon house, and several other structures in the area were larger buildings on larger lots. Building a larger building, installing amenities, and trying to accommodate more students was extremely difficult on this property, which was a hardship. The footprint of the existing house was 3,692 square feet and the footprint of the proposed house would be 9,646 square feet. He mentioned the total square footage would increase by about 2.6 times as it would be a multi-story structure. Although the size of the building would increase by 2.6 times, the number of residents would only increase by 15% because the existing house was extremely small. A lot of things had changed in 90 years, such as fire codes, electrical codes, access requirements, hallway and doorway widths, etc., which required a larger house. They wanted larger rooms and more privacy was being sought. The Delta Gamma house had petitioned the City Council to change the parking regulations in Greek Town to allow off-site parking in a residential area. He noted the City Council had indicated they wanted to put more students closer to campus and thought the City Council was agreeable to reducing the parking requirements to increase the student population on or adjacent to campus. Parking was required to be located within 1,000 feet of the premises, and their parking would be located within 400 feet. He stated one of the variances being requested was for a porch to provide access to a lower level. A stair tower adjacent to the building would go to a lower level and would not be an obstruction or seen from neighboring lots. Another variance was for parking within six feet of the rear yard. He noted that condition currently existed as their parking went on to the neighbor's property and commented that they had an easement. They were also requesting a variance from screening that portion of the parking. He mentioned that while they were requesting multiple variances, many of them piggybacked off of each other and made sense.

Mr. Harrison noted the proposed house would face Providence Road. The first variance was for the 25 foot front yard setback for a large porch and a portion of the building. They felt it was not practically possible to design the house and comply with City ordinances. The second variance was for the north side yard setback along Burnam Avenue. Mr. Hazelrigg asked if that variance was for an entrance awning. Mr. Harrison replied that was correct and noted it would not encroach into the setback much.

Ms. Hammen asked Mr. Harrison to provide the dimensions for the variances and whether there was a street easement in the Providence Road area. Mr. Harrison replied he was sure there was an easement. Mr. Crockett stated he would provide the dimensions after Mr. Harrison's testimony.

Mr. Harrison stated the third variance was for the south side yard setback where stairs would be located. The fourth variance was for the rear yard setback where part of the dining room would encroach into the required setback. He noted the fifth variance was for the 35 foot building height limitation in the R-3 zoning district and mentioned the Board had dealt with that situation with other fraternities and sororities. He thought the proposed building height would be about 45 feet 4 inches. They felt they had met the requirements for obtaining a variance given the practical difficulties of complying with the strict letter of the ordinance. The sixth variance was for the parking requirement of one parking space per two occupants. The same entity owned the subject property and the annex, and both properties were located in Greek Town, which was a requirement of the City ordinance. He reiterated that there would be four parking spaces at the proposed new house and 30 parking spaces at the annex, and they were required to provide 47 parking spaces. The parking

ordinance recently enacted by the City Council said landscaping and screening requirements still applied. The proposed parking lot at the annex would be 70 feet wide and 180 feet deep. He stated they were requesting a one foot variance to the parking setbacks on both sides of the proposed annex parking lot in order for the parking spaces to be up to code. He noted screening would be installed on the north and south sides. The seventh variance, for parking within six feet of an adjoining lot in a residential district, was needed due to the compactness of the lot. He stated Section 29-30 of the City Code said parking was not permitted within six feet of an adjoining lot and believed vehicles were currently parking within the six feet. The practical difficulties associated with this variance had to do with the size and shape of the lot and the layout of the house. They did not think the variances would cause any public safety issue, harm, or detrimental effect on the surrounding area. The eighth variance was for the screening and landscaping requirements for paved areas within 50 feet of a residential use. They were requesting a variance for that due to the nature of the lot, the size of the lot, and unique characteristics of the lot. There were numerous structures in the Greek Town area where building height and setback variances had been granted. He showed photos of properties in the Greek Town area that lacked screening.

Mr. Hazelrigg understood a courtyard would be at the rear of the house, off of the dining room. Mr. Harrison replied he thought that was correct.

Mr. Moehlman suggested a five minute recess to accommodate the sign language interpreter and court reporter. Chair Clithero recessed the meeting for five minutes.

Mr. Harrison clarified a stair tower would not be on the property and stated a stairwell might be a better term. The stairwell would be entered from the ground level and the stairs would go downward instead of upward.

Mr. Hazelrigg noted the site plan did not depict the location of the parking spaces. He assumed the spaces would be on the east side of the building on each side of the court yard. Mr. Crockett stated that was correct. The parking spaces would mainly be handicapped accessible spaces and would be at the rear of the building where the existing spaces were located.

Ms. John asked for the actual amount of each variance being requested. Mr. Harrison stated a 15 foot variance was needed for the 25 foot front yard setback on Providence Road. Mr. Crockett noted the farthest portion of the porch was 15 feet beyond the building line, and the edges of the porch were between six and seven feet beyond the building line depending on the side. Ms. Hammen understood there would be a 10 foot front yard at the farthest portion of the porch. Mr. Crockett stated that was correct. Mr. Harrison mentioned the variance for the north side yard setback was 3.5 feet. Mr. Crockett noted a porch and overhang would encroach 3.5 feet into that side yard. Ms. Hammen asked for the setback. Mr. Crockett replied it would be 11.5 feet. The variance for the south side yard was for the stairwell that encroached five feet from the proposed building. He pointed out the existing building was about five or six feet off of the existing property line, and the stairwell would be located roughly the same distance off. Ms. Hammen understood there would be a five foot setback on that side. Mr. Harrison and Mr. Crockett stated that was correct. Ms. John asked how much of a variance that was from the requirement. Mr. Harrison replied a 10 foot setback was required. Ms. Hammen asked if the parking encroached onto the property next door. Mr. Crockett replied there was no parking on the south side. Mr. Harrison stated the variance for the east rear yard was where the dining area encroached five feet into the 25 foot setback, therefore a five foot variance was needed. Mr. Crockett noted everything on the east side or the rear of the building was currently paved. He commented that they had an easement

agreement with their neighbor, Chi Omega, and the parking lot access partially went onto the Chi Omega property. The fifth variance was for the building height. Ms. John asked for the variance to the building height. Mr. Crockett replied the current building height was 35 feet. Ms. Hammen noted the application stated the proposed building height would be 46 feet 6 inches and asked if that had changed. Mr. Harrison replied it had and the proposed height was now 45 feet 2 inches. Mr. Hazelrigg understood that was when measured to the highest peak. Mr. Crockett replied it was the median. Mr. Harrison stated the sixth variance was for parking and reiterated that they were requesting to be allowed 34 parking spaces. Ms. Hammen understood that included the annex parking. Mr. Crockett and Mr. Harrison replied that was correct.

Mr. Moehlman asked for the number of parking spaces that could be put at 411 Burnam Avenue if the variances were not granted. He assumed the 30 parking spaces was based on the assumption that the variances for 411 Burnam Avenue would be granted. Mr. Crockett replied that was correct and mentioned four parking spaces would be on this site. Mr. Moehlman asked for the number of parking spaces that could be put on the annex site without a variance. Mr. Crockett thought they would utilize the existing spaces which he did not believe were in conformance with the City's setback and screening standards. He thought if the property was grandfathered in they could still utilize those parking spaces and have 24 parking spaces. He noted that tract was 70 feet wide and the parking aisles were 60 feet, which left five feet on either side although six feet was required. The seventh variance was related to parking not being permitted within six feet of a property line. He reiterated that the condition currently existed which was why they were requesting a variance to zero. Ms. Hammen understood that variance would be located at the main house. Mr. Crockett stated that was correct. He mentioned their request was to maintain the same distance that currently existed. The eighth variance was for the screening and landscaping requirement because of the easement agreement that allowed the parking lot access to cross the property line. He stated they were requesting a variance to leave their parking in place, and if their parking was left in place it obviously could not be screened. He pointed out a six foot privacy fence was adjacent to the parking lot between the subject property and the Chi Omega house, and although it did not meet the standards it was a part of screening. Ms. Hammen asked what side of the property the screening and landscaping variance was being requested. Mr. Crockett replied it was the east side. Ms. Hammen understood there was pervious surface in that location due to the shared drive. Mr. Crockett stated that was correct and commented that the lot would not be seen from Providence Road because it would be screened by the house. Ms. Hammen asked if the Board could specify that a variance to the screening and landscaping was only being requested for the east side. Mr. Hazelrigg stated the Board would want to specify that when making a motion.

Mr. Crockett noted the requested setback variances did not conflict with any utilities.

Ms. Hammen asked which side of the house the four parking spaces would be located. Mr. Crockett replied it was the east side.

Ms. Hammen asked if there would be anything different in regard to stormwater drainage since the existing house was built 90 years ago. Mr. Crockett replied they had not yet ran those numbers, but would be in full conformance with the City of Columbia Stormwater Manual. He noted there was a storm sewer at the corner of Providence Road and Burnam Avenue and they would not have to request relief to the regulations because everything would be on site.

Mr. Hazelrigg commented that it appeared the footprint of the existing building would not encroach into the setbacks, except on the backside of the dining hall and the east side. Mr. Harrison stated

there was a tiny encroachment on the Providence Road side. Mr. Hazelrigg asked if it was on the corner. Mr. Harrison replied it was in the middle.

Mr. Moehlman noted the alleged difficulty must be different from that suffered throughout the zone or the location. The subject property was located in the R-3 zoning district and was surrounded by R-3 zoned properties. He asked how the subject property was different than other properties facing the same limitations. Mr. Harrison replied the practical difficulties, such as the size and shape of the lot, etc. were previously mentioned. He noted the parcel where the parking lot would be located created a complexity.

Mr. Moehlman asked Mr. Harrison to respond to the assertion that the lot was too small to reasonably allow a 38,000 square foot building. Mr. Harrison replied that he disagreed. They could not build out so they had to build up. The practical answer was they needed a building height variance given the buildings in the area and similar cases the Board had considered. He thought the practicalities of dealing with the ordinance was the legal test.

Mr. Moehlman stated a person seeking a non-use variance had to demonstrate that as a practical matter the property could not be used for a permitted use without coming into conflict with ordinance restrictions. He asked why a variance was needed for the subject property to continue to be used as a permitted use in the R-3 zoning district. Mr. Harrison replied he thought the key was whether it was practical. He did not think the standard was for one to literally be able to use what was being contemplated. He felt it was a practical standard, and they were going to need the variances in order to accommodate all of the considerations they Board had to take into account.

There being no further comment, Chair Clithero closed the public hearing.

Mr. Simon believed the applicant had clearly stated what they were seeking and had accurately described the property. He asked if there was a roof over the stairwell on the south side of the property. Mr. Crockett replied there was not. Mr. Simon stated the City would not consider a retaining wall to be a portion of the structure. Ms. Hammen understood a variance would not be needed for that. Mr. Simon commented that his opinion if there was no roof or portion of the building, it would qualify as a retaining wall with a set of steps, however if it had a roof it would require a variance. Mr. Crockett did not believe there was a roof over that particular portion and noted the architect had understood a variance would be required. Mr. Moehlman asked if Mr. Harrison wanted to continue with the variance request for the south side yard setback. Mr. Harrison replied he thought they should continue with the request. Mr. Hazelrigg noted the variance would allow the applicant to put a roof over the stairwell in the future. Mr. Harrison stated at some point during or after construction a roof might be advisable so he thought it would be better if the variance request was not withdrawn.

Ms. Hammen understood the proposed building height would be higher than 45 feet 5 inches due to how roofs were measured. In addition, the proposed structure would almost be boundary line to boundary line, and it seemed the subject lot being a smaller lot was a problem. She commented that the subject property was located on Providence Road, which was a major corridor, and the structure would be 10 feet from the street easement. She pointed out that Providence Road could be widened in the future. She noted that she had a problem with most of the variances being requested. She thought parking was a major issue and mentioned it was a problem in every neighborhood that surrounded the downtown. She stated the idea of creating lesser parking

because people would use the bus had not been borne, and allowing lesser parking when the community had not demonstrated bringing in fewer cars seemed to be a poor idea.

Mr. Hazelrigg stated he was comfortable with the variance requests for the side yard, front yard, etc. although the footprint would encroach into the dangerous area that concerned Ms. Hammen. He had waited for Providence Road to be widened for his entire life and it had not been widened. He mentioned that he did not have a problem with what the applicant was seeking for the proposed building and noted this was similar to previous requests in this area. He thought the applicant was trying to conform to other buildings that had attempted to improve amenities, size, safety, etc. He commented that he was concerned about parking and stated parking had always been an issue and would always be an issue because there would never be fewer cars. Ms. John stated the City's public transit was not good enough to keep cars out. Mr. Hazelrigg commented that parking was his only concern, and appreciated the fact the applicant was trying to get all of the members under one roof. The property was unique with essentially two front yards on Burnam Avenue and Providence Road, and was very visible.

Chair Clithero asked where additional cars would park if there were not enough parking spaces. Mr. Hazelrigg recalled his dorm room being located nowhere near where his car was located and understood that was the scenario for a lot of students today. Chair Clithero thought there were now more parking restrictions in neighborhoods. Ms. Hammen stated those restrictions were not in place yet. Chair Clithero noted there were "No Parking" signs in the neighborhoods next to Greek Town. He mentioned he did not have as big of an issue with parking. He understood if the variances in Case Number 1914 were not approved, there would only be four parking spaces. Mr. Hazelrigg noted there were currently 24 parking spaces at the annex. Ms. Hammen asked how there were currently 24 parking spaces and a house on the lot, but only 30 proposed parking spaces for the lot. Mr. Crockett replied the existing parking spaces were not necessarily in conformance with regulations and the proposed parking spaces would all be conforming.

Mr. Moehlman asked whether the applicant had an exhibit the Board could reference. Mr. Harrison submitted an exhibit marked "Applicant Exhibit #1".

Mr. Harrison stated he sensed reluctance from the Board with regard to parking. If the Board was inclined to deny that variance request, they did not want to be foreclosed from pursuing other options. Ms. John understood the next case on the agenda related to that. Mr. Harrison stated that was correct. He thought Case Number 1913 pertained to the number of parking spaces and Case Number 1914 pertained to the actual parking lot parcel. They wanted the ability to explore other alternatives and not be foreclosed from modifying their request or returning to the Board for something different. Ms. Hammen asked how the applicant would do that. Mr. Harrison replied they could request the Board approve the variance request subject to finding parking spaces elsewhere. Mr. Hazelrigg stated there was no way the applicant could fit the required number of parking spaces on this parcel. Mr. Harrison noted they would either need a variance or would need to find additional parking.

Ms. John made a motion to approve a variance for a 15 foot encroachment into the west front yard as shown on Applicant's Exhibit #1. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1913 (west front yard) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAZELRIGG, JOHN. VOTING NO: HAMMEN. The variance was approved.

Ms. John made a motion to approve a variance for a 3.5 foot encroachment into the north side yard as shown on Applicant's Exhibit #1. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1913 (north side yard) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAZELRIGG, JOHN. VOTING NO: HAMMEN. The variance was approved.

Ms. John made a motion to approve a variance for a 5 foot encroachment into the south side yard as shown on Applicant's Exhibit #1. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1913 (south side yard) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAZELRIGG, JOHN. VOTING NO: HAMMEN. The variance was approved.

Ms. John made a motion to approve a variance for a 5 foot encroachment into the east rear yard as shown on Applicant's Exhibit #1. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1913 (east rear yard) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAMMEN, HAZELRIGG, JOHN. VOTING NO: NO ONE. The variance was approved.

Ms. John understood the applicant was requesting a variance to the building height of 10 feet and 2 inches for a building height of 45 feet 2 inches and asked if that was correct. Mr. Hazelrigg asked if it was 45 feet 5 inches or 45 feet 2 inches. Mr. Harrison stated the proposed building height was 45 feet 5 inches.

Ms. John made a motion to approve a variance of 10 feet 5 inches to allow a building height of 45 feet 5 inches. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1913 (building height) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAZELRIGG, JOHN. VOTING NO: HAMMEN. The variance was approved.

Ms. John stated she was unsure what to do for the sixth variance. Mr. Hazelrigg felt the Board had to forget that another case would be heard. Ms. John noted part of the variance request for this case was for off-site parking. Mr. Hazelrigg asked if the Board could grant the variance under the condition that a variance was approved for the off-site parking. He understood the applicant was concerned with that approach. Ms. John asked if the Board could wait until the other case was heard. Mr. Moehlman replied how to proceed was up to the Board. The Board had the option to postpone voting on this particular variance until after the other case was heard. Mr. Harrison was agreeable to Ms. John's suggestion.

Ms. John made a motion to postpone voting on the variance to the minimum off-street parking spaces required and the requirement that those parking facilities be located on premise or within one thousand (1,000) feet therefrom until after the Board heard Case Number 1914. The motion was seconded by Mr. Hazelrigg and approved unanimously by voice vote.

Ms. John understood the existing parking was currently within zero feet of the adjoining lot.

Mr. Hazelrigg made a motion to approve a variance to the requirement that no parking be permitted within six (6) feet of an adjoining lot in a residential district as shown on Applicant's Exhibit #1. The motion was seconded by Ms. John.

Ms. Hammen understood the parking would be within six feet of the adjoining lot line. Mr. Hazelrigg noted vehicles were currently parking within the six feet. Ms. Hammen understood that was on the east side. Mr. Hazelrigg stated that was correct.

CASE NO. 1913 (parking within six feet of adjoining lot line) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAMMEN, HAZELRIGG, JOHN. VOTING NO: NO ONE. The variance was approved as shown on Applicant's Exhibit #1.

Mr. Hazelrigg made a motion to approve a variance to the screening and landscaping requirement for paved areas within 50 feet of residential use for the east side of the property as shown on Applicant's Exhibit #1. The motion was seconded by Ms. John.

CASE NO. 1913 (screening and landscaping) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAMMEN, HAZELRIGG, JOHN. VOTING NO: NO ONE. The variance was approved as shown on Applicant's Exhibit #1.

Case Number 1914 was a request by MU House Corporation of Delta Gamma, a Benevolent Corporation, f/k/a MU Association of Delta Gamma for variances to the (1) requirement that no parking be permitted within six (6) feet of an adjoining lot in a residential district by allowing parking within six (6) feet of an adjoining lot in a residential district; and (2) screening and landscaping requirements for paved areas within fifty feet of a residential use/zoning district by not requiring screening and landscaping for the paved areas within fifty feet of a residential use/zoning district as required by Section 29-25(e)(5) on property located at 411 Burnam Avenue.

Chair Clithero opened the public hearing.

Tom Harrison, an attorney with offices at 1103 E. Broadway, appeared on behalf of the applicant. He stated the parking variance requested in Case Number 1913 was for the number of parking spaces and clarified this request was for the parking lot parcel itself. Ms. John understood the request related to how the parking lot fit. Mr. Harrison stated that was correct.

Mr. Harrison requested the Board consider all of the evidence presented for Case Number 1913 in order to repeat as little as possible. He provided a PowerPoint presentation, and explained the ordinance required a six foot setback and they were requesting a variance of one foot on each side as it would permit them to have parking spaces that would fit a reasonable automobile.

Ms. John noted it would also allow for an aisle. Mr. Harrison stated that was correct. Ms. John understood the applicant was requesting a one foot encroachment on each side. Mr. Harrison stated that was correct.

Mr. Harrison mentioned the uniqueness aspect had already been covered in the other case. The second variance being requested for the subject property was for screening and landscaping. He noted they would screen the north side and the two corners other than where the driveway was located on the south side. He explained the screening and landscaping variance was for the other sides of the parking lot where screening and landscaping would not work due to the very narrow areas.

Ms. John understood four parking spaces would be located at the house and 30 parking spaces would be located at this subject property. Mr. Harrison stated that was correct. Ms. John understood if the Board did not approve this request they would have to decide on the number of parking spaces for the variance to the minimum number of off-street parking spaces in Case Number 1913. Mr. Harrison stated that was correct. He requested the Board approve the variance subject to the applicant finding additional parking spaces through other legal means, such as a parking lease, if the Board felt 34 parking spaces was not enough.

Chair Clithero understood the applicant was requesting a variance to the landscaping and screening requirements where the two five foot setbacks would be located. Mr. Crockett stated that was correct. Chair Clithero asked what would happen to those sections. Mr. Crockett replied grass vegetation would grow there. Typically a six foot wide landscaped strip with vegetative buffer of a certain height, opacity, and length was required for a screening strip or area. He noted a privacy fence would typically be installed in a narrow strip such as this; however landscaping would be required on the back side of it, which in many instances would die and become unsightly. The majority of property adjacent to the subject property were other parking lots that went to the property line, so the landscaping strip would be very narrow. They believed 30 parking spaces would be ideal. He noted although they were not requesting them now, they could request variances to put four parking spaces toward Burnam Avenue and four parking spaces closer to the rear yard setback. He noted the ordinance enacted by City Council about a week ago specifically mentioned front and rear yard screening requirements to which they wanted to adhere.

Chair Clithero understood the Board should make two separate motions. Mr. Moehlman stated it was cleaner that way. Chair Clithero commented that he understood the variance for the screening, but wanted to be careful about the word landscaping. He understood the applicant intended to keep the area a grassy area.

There being no further comment, Chair Clithero closed the public hearing.

Mr. Moehlman commented that the standards that would apply were similar to the practical difficulty standards previously stated.

Ms. Hammen asked if landscaping could be provided in the five foot strip. Mr. Crockett replied he thought it could, but believed it would be difficult to keep alive as the neighbors were encroaching onto their property where a majority of the parking was located. Ms. Hammen understood the area would have to be mowed if it was grass. Mr. Crockett stated that was correct. He noted they would be encroaching into an adjacent parking lot and the adjacent parking lot would also encroach into their parking lot. Ms. John noted there was a driveway on both sides. Mr. Crockett pointed out their lot would have a 6 foot strip and their neighbor would have a 6 foot strip, so they would end up with a 12 foot strip that was more maintainable and suitable for landscaping as opposed to a smaller space with cars on both sides bumping into the landscaping and tearing it out. Mr. Hazelrigg noted maintenance would be an issue when vehicles parked over the landscaping. Ms. Hammen stated the parking lot could be the most beautiful parking lot on the street. Mr. Crockett noted they had a 25 foot setback which was more than anyone else.

Ms. John made a motion to approve a variance for a one foot encroachment on the east and west sides of the parking lot. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1914 (parking within six feet of an adjoining lot) VOTE RECORDED AS FOLLOWS:

VOTING YES: CLITHERO, REICHERT, HAZELRIGG, JOHN. VOTING NO: HAMMEN. The variance was approved.

Ms. John made a motion to approve a variance from the screening and landscaping requirements on the east and west side yards. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1914 (screening and landscaping) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAZELRIGG, JOHN. VOTING NO: HAMMEN. The variance was approved.

Case Number 1913 was a request by MU House Corporation of Delta Gamma, a Benevolent Corporation, f/k/a MU Association of Delta Gamma for variances to the (1) front yard setback requirement (west) by allowing the proposed building and porch to encroach into the required front yard; (2) side yard setback requirement (north) by allowing the proposed porch to encroach into the required side yard; (3) side yard setback requirement (south) by allowing the proposed stairs to encroach into the required side yard; (4) rear yard setback requirement (east) by allowing the proposed building to encroach into the required rear yard; (5) maximum building height requirement by allowing the building height to exceed the maximum height permitted; (6) minimum off-street parking spaces required and the requirement that those parking facilities be located on premise or within one thousand (1,000) feet therefrom by allowing fewer off-street parking spaces than required and allowing those parking facilities to not be located on premise or within one thousand (1,000) feet therefrom; (7) requirement that no parking be permitted within six (6) feet of an adjoining lot in a residential district by allowing parking to be located within six (6) feet of an adjoining lot in a residential district; and (8) screening and landscaping requirements for paved areas within fifty feet of a residential use/zoning district by not requiring screening and landscaping for the paved areas within fifty feet of a residential use/zoning district as required by Section 29-25(e)(5) on property located at 900 S. Providence Road.

Ms. John stated since the Board had approved the parking lot, the applicant would be allowed a total of 34 parking spaces. Mr. Hazelrigg and Ms. John noted the number of parking spaces was 13 shy of what would be required. Mr. Hazelrigg understood the Board would be granting a variance to the minimum off-street parking and asked if the Board needed to specify a number. Mr. Moehlman replied the motion should be stated in the positive and off-site versus on-site should be specified. Ms. Hammen understood that variance would not be tied to the Burnam Avenue lot. Mr. Hazelrigg stated it would not be tied to the Burnam Avenue property, but it would be tied to the on-site and off-site parking. He noted a total of 34 parking spaces would be on-site and off-site. Ms. Hammen mentioned the Board could make a motion to require 47 on-site and off-site parking spaces. Ms. John stated that would not be a variance. Mr. Moehlman noted that would be a denial of the variance.

Ms. John made a motion to approve a variance for Case Number 1913 to allow a total of 34 parking spaces on-site and off-site. The motion was seconded by Mr. Hazelrigg.

CASE NO. 1913 (minimum parking) VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, REICHERT, HAZELRIGG, JOHN. VOTING NO: HAMMEN. The variance was approved.

Mr. Clithero asked Ms. Eldridge if she had received responses to her inquiry regarding a training session. Ms. Eldridge replied she was waiting to hear from one other person and would then respond to everyone.

There being no further business, the meeting adjourned at 9:17 p.m.

Respectfully Submitted,

Megan Eldridge
Deputy City Clerk